

REMARKS

Reconsideration of this application, as amended, is respectfully requested.

Claims 1-12, 14-43, and 45-54 are currently pending in the application. As indicated above, Claims 53 and 54 have been newly added, Claim 45 has been amended, and Claims 13 and 44 have been cancelled without prejudice. It is gratefully acknowledged that the Examiner has allowed Claims 14-24, and found allowable subject matter in Claims 2-7, 12, 26-31, 33, 35-40, and 47-52.

In the Office Action, the Examiner has rejected Claims 1, 10, 11, 25, 32, 34, 43, and 46 under 35 U.S.C. § 103(a) as being unpatentable over *Sadri* (U.S. 6,690,652) in view of *Proctor, Jr.* (U.S. 6,925,070 B2), Claims 8, 9, 41, and 42 under 35 U.S.C. § 103(a) as being unpatentable over *Sadri* in view of *Proctor*, and further in view of *Gopalakrishnan et al.* (U.S. 6,859,446 B1), and Claims 13, 44, and 45 under 35 U.S.C. § 102(e) as being anticipated by *Dahlman et al.* (U.S. 6,912,228).

As indicated above, the Examiner has rejected independent Claims 1, 25, 34, and 46 under 35 U.S.C. § 103(a) as being unpatentable over *Sadri* in view of *Proctor*. However, it is respectfully submitted that these claims are patentably distinct from *Sadri* in view of *Proctor*.

More specifically, upon reviewing *Sadri* (see col. 8 lines 67-col. 9 line 4), a data rate is adaptively changed by means of adjustment in the length of its orthogonal code generation. Therefore, it is respectfully submitted that the Examiner's statement that *Sadri* discloses the step of receiving *orthogonal code allocating information indicating a number of orthogonal codes* allocated for the packet data service, which is taught in the present application, is incorrect. In

addition, it is respectfully submitted that the Examiner is incorrect in asserting that “the controlling step”, which is mistakenly regarded as “the determining step” by the Examiner, (i.e., the step of controlling the determined data rate based on the number of the allocated orthogonal codes) is disclosed in *Sadri*.

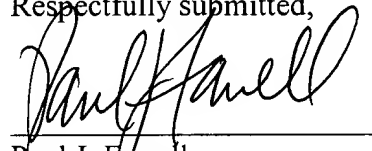
Further, the Examiner states that other elements recited in independent Claim 1 of the present application are disclosed in *Proctor*. That is, the Examiner asserts that *Proctor* discloses the step of determining a data rate corresponding to signal to noise ratio such that an optimum data rate could be selected in the particular channel environment, which is recited in the independent claims. However, *Proctor* teaches the transmission of data to a user on an as-needed basis over multiple allocated data channels. More specifically, data packets are transmitted in time of the allocated data channels to corresponding target receivers without the need for explicitly assigning particular time-slots to a target user well in advance of transmitting any data packets in the time-slot. At this time, each data packet transmitted in a time-slot includes a header label or preamble indicating to which of multiple possible receivers a data packet is directed (see abstract). Accordingly, it is respectfully submitted that the Examiner’s is incorrect in stating that *Proctor* discloses the measuring step and determining step of as recited in the independent claims.

Therefore, based at least upon the arguments presented above, it is respectfully submitted that independent Claims 1, 25, 34, and 46 are patentably distinct over *Sadri* in view of *Proctor*, and it is respectfully requested that the rejection of these claims be withdrawn.

Without conceding the patentability of dependent Claims 2-12, 26-33, 35-43, 45, and 47-54, it is respectfully submitted that they are patentable as being dependent upon independent Claims 1, 25, 34, and 46, respectively. As indicated above, it is gratefully acknowledged that that the Examiner has allowed Claims 14-24.

Accordingly, it is respectfully submitted that the present application is in condition for allowance. Should the Examiner have any questions, it is respectfully requested that the undersigned attorney be contacted at the earliest convenience to discuss the present application. Early and favorable action is earnestly solicited.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Paul J. Farrell", is written over a horizontal line.

Paul J. Farrell

Reg. No. 33,494

Attorney for Applicant(s)

DILWORTH & BARRESE, LLP
333 Earle Ovington Boulevard
Uniondale, New York 11553
TEL: (516) 228-8484
FAX: (516) 228-8516
PJF/DMO